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103D CONGRESS
1ST SESSION

H. R. 3216

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in the illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 1993

Mr. STUPAK introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and the Judiciary

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A BILL

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to control the diversion of certain chemicals used in the illicit production of controlled substances such as methcathinone and methamphetamine, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Domestic Chemical Diversion Control Act of 1993''.

SEC. 2. DEFINITION AMENDMENTS.

(a) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (33), by striking ''any listed precursor chemical or listed essential chemical'' and inserting ''any list I chemical or any list II chemical'';

(2) in paragraph (34)—

(A) by striking ''listed precursor chemical'' and inserting ''list I chemical''; and

(B) by striking ''critical to the creation'' and inserting ''important to the manufacture'';

(3) in paragraph (34) (A), (F), and (H), by inserting '', its esters,'' before ''and'';

(4) in paragraph (35)—

(A) by striking ''listed essential chemical'' and inserting ''list II chemical'';

(B) by inserting ''(other than a list I chemical)'' before ''specified''; and

(C) by striking ''as a solvent, reagent, or catalyst''; and

(5) in paragraph (38), by inserting ''or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine'' before the period;

(6) in paragraph (39)(A)—

(A) by striking ''importation or exportation of'' and inserting ''importation, or exportation of, or an international transaction involving shipment of,'';

(B) in clause (iii) by inserting ''or any category of transaction for a specific listed chemical or chemicals'' after ''transaction'';

(C) by amending clause (iv) to read as follows:

''(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) unless—

''(I)(aa) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient; or

''(bb) the Attorney General has determined under section 204 that the drug or

group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

''(II) the quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General.''; and

(D) in clause (v), by striking the semicolon and inserting ''which the Attorney General has by regulation designated as exempt from the application of this title and title II based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered;'';

(7) in paragraph (40), by striking ''listed precursor chemical or a listed essential chemical'' each place it appears and inserting ''list I chemical or a list II chemical''; and

(8) by adding at the end the following new paragraphs:

''(42) The term 'international transaction' means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

''(43) The terms 'broker' and 'trader' mean a person that assists in arranging an international transaction in a listed chemical by—

''(A) negotiating contracts;

''(B) serving as an agent or intermediary; or

''(C) bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.''.

(b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

(1) PROCEDURE.—Part B of the Controlled Substances Act (21 U.S.C. 811 et seq.) is amended by adding at the end the following new section:

''REMOVAL OF EXEMPTION OF CERTAIN DRUGS

''SEC. 204. (a) REMOVAL OF EXEMPTION.—The Attorney General shall by regulation remove from exemption under section 102(39)(A)(iv) a drug or group of drugs that the Attorney General finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance.

''(b) FACTORS TO BE CONSIDERED.—In removing a drug or group of drugs from exemption under subsection (a), the Attorney General shall consider, with respect to

a drug or group of drugs that is proposed to be removed from exemption—

''(1) the scope, duration, and significance of the diversion;

''(2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

''(3) whether the listed chemical can be readily recovered from the drug or group of drugs.

''(c) SPECIFICITY OF DESIGNATION.—The Attorney General shall limit the designation of a drug or a group of drugs removed from exemption under subsection (a) to the most particularly identifiable type of drug or group of drugs for which evidence of diversion exists unless there is evidence, based on the pattern of diversion and other relevant factors, that the diversion will not be limited to that particular drug or group of drugs.

''(d) REINSTATEMENT OF EXEMPTION WITH RESPECT TO PARTICULAR DRUG PRODUCTS.—

''(1) REINSTATEMENT.—On application by a manufacturer of a particular drug product that has been removed from exemption under subsection (a), the Attorney General shall by regulation reinstate the exemption with respect to that particular drug

product if the Attorney General determines that the particular drug product is manufactured and distributed in a manner that prevents diversion.

''(2) FACTORS TO BE CONSIDERED.—In deciding whether to reinstate the exemption with respect to a particular drug product under paragraph (1), the Attorney General shall consider—

''(A) the package sizes and manner of packaging of the drug product;

''(B) the manner of distribution and advertising of the drug product;

''(C) evidence of diversion of the drug product;

''(D) any actions taken by the manufacturer to prevent diversion of the drug product; and

''(E) such other factors as are relevant to and consistent with the public health and safety, including the factors described in subsection (b) as applied to the drug product.

''(3) STATUS PENDING APPLICATION FOR REINSTATEMENT.—A transaction involving a particular drug product that is the subject of a bona fide pending application for reinstatement of exemption filed with the Attorney General not later than 60 days

after a regulation removing the exemption is issued pursuant to subsection (a) shall not be considered to be a regulated transaction if the transaction occurs during the pendency of the application and, if the Attorney General denies the application, during the period of 60 days following the date on which the Attorney General denies the application, unless—

''(A) the Attorney General has evidence that, applying the factors described in subsection (b) to the drug product, the drug product is being diverted; and

''(B) the Attorney General so notifies the applicant.

''(4) AMENDMENT AND MODIFICATION.—A regulation reinstating an exemption under paragraph (1) may be modified or revoked with respect to a particular drug product upon a finding that—

''(A) applying the factors described in subsection (b) to the drug product, the drug product is being diverted; or

''(B) there is a significant change in the data that led to the issuance of the regulation.''.

(2) CLERICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention

and Control Act of 1970 (84 Stat. 1236) is amended by adding at the end of that portion relating to part B of title II the following new item:

''Sec. 204. Removal of exemption of certain drugs.''.

(c) REGULATION OF LISTED CHEMICALS.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended—

(1) in subsection (a)(1)—

(A) by striking ''precursor chemical'' and inserting ''list I chemical''; and

(B) in subparagraph (B), by striking ''an essential chemical'' and inserting ''a list II chemical''; and

(2) in subsection (c)(2)(D), by striking ''precursor chemical'' and inserting ''chemical control''.

SEC. 3. REGISTRATION REQUIREMENTS.

(a) RULES AND REGULATIONS.—Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by striking the period and inserting ''and to the registration and control of regulated persons and of regulated transactions.''.

(b) PERSONS REQUIRED TO REGISTER UNDER SECTION 302.—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended—

(1) in subsection (a)(1), by inserting ''or list I chemical'' after ''controlled substance'' each place it appears;

(2) in subsection (b)—

(A) by inserting ''or list I chemicals'' after ''controlled substances''; and

(B) by inserting ''or chemicals'' after ''such substances'';

(3) in subsection (c), by inserting ''or list I chemical'' after ''controlled substance'' each place it appears; and

(4) in subsection (e), by inserting ''or list I chemicals'' after ''controlled substances''.

(c) REGISTRATION REQUIREMENTS UNDER SECTION 303.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following new subsection:

''(h) The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under section 102(39)(A)(iv). In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

''(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

''(2) compliance by the applicant with applicable Federal, State, and local law;

''(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

''(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

''(5) such other factors as are relevant to and consistent with the public health and safety.''.

(d) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION.—Section 304 of the Controlled Substances Act (21 U.S.C. 824) is amended—

(1) in subsection (a)—

(A) by inserting ''or a list I chemical'' after ''controlled substance'' each place it appears; and

(B) by inserting ''or list I chemicals'' after ''controlled substances'';

(2) in subsection (b), by inserting ''or list I chemical'' after ''controlled substance'';

(3) in subsection (f), by inserting ''or list I chemicals'' after ''controlled substances'' each place it appears; and

(4) in subsection (g)—

(A) by inserting ''or list I chemicals'' after ''controlled substances'' each place it appears; and

(B) by inserting ''or list I chemical'' after ''controlled substance'' each place it appears.

(e) PERSONS REQUIRED TO REGISTER UNDER SECTION 1007.—Section 1007 of the Controlled Substances Import and Export Act (21 U.S.C. 957) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting ''or list I chemical'' after ''controlled substance''; and

(B) in paragraph (2), by striking ''in schedule I, II, III, IV, or V,'' and inserting ''or list I chemical,''; and

(2) in subsection (b)—

(A) in paragraph (1), by inserting ''or list I chemical'' after ''controlled substance'' each place it appears; and

(B) in paragraph (2), by inserting ''or list I chemicals'' after ''controlled substances''.

(f) REGISTRATION REQUIREMENTS UNDER SECTION 1008.—Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958) is amended—

(1) in subsection (c)—

(A) by inserting ''(1)'' after ''(c)''; and

(B) by adding at the end the following new paragraph:

''(2)(A) The Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the import or export of a drug product that is exempted under section 102(39)(A)(iv).

''(B) In determining the public interest for the purposes of subparagraph (A), the Attorney General shall consider the factors specified in section 303(h).'';

(2) in subsection (d)—

(A) in paragraph (3), by inserting ''or list I chemical or chemicals,'' after ''substances,''; and

(B) in paragraph (6), by inserting ''or list I chemicals'' after ''controlled substances'' each place it appears;

(3) in subsection (e), by striking ''and 307'' and inserting ''307, and 310''; and

(4) in subsections (f), (g), and (h), by inserting ''or list I chemicals'' after ''controlled substances'' each place it appears.

(g) PROHIBITED ACTS C.—Section 403(a) of the Controlled Substances Act (21 U.S.C. 843(a)) is amended—

(1) by amending paragraphs (6) and (7) to read as follows:

''(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this title or title II;

''(7) to manufacture, distribute, export, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be

used to manufacture a controlled substance or listed chemical in violation of this title or title II or, in the case of an exportation, in violation of this title or title II or of the laws of the country to which it is exported;'';

(2) by striking the period at the end of paragraph (8) and inserting ''; or''; and

(3) by adding at the end the following new paragraph:

''(9) if the person is a regulated person, to distribute, import, or export a list I chemical without the registration required by this Act.''.

SEC. 4. ANTI-SMUGGLING PROVISION.

Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended—

(1) by striking ''or'' at the end of paragraph (1); and

(2) by adding at the end the following new paragraph:

''(3) imports or exports a listed chemical in violation of section 1007 or 1018,''.

SEC. 5. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.

Section 510 of the Controlled Substances Act (21 U.S.C. 880) is amended—

(1) by amending subsection (a)(2) to read as follows:

''(2) places, including factories, warehouses, and other establishments, and conveyances, where persons registered under section 303 (or exempt from registration under section 302(d) or by regulation of the Attorney General) or regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained.''; and

(2) in subsection (b)(3)—

(A) in subparagraph (B), by inserting '', listed chemicals,'' after ''unfinished drugs''; and

(B) in subparagraph (C), by inserting ''or listed chemical'' after ''controlled substance'' and inserting ''or chemical'' after ''such substance''.

SEC. 6. FORFEITURE EXPANSION.

Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended—

(1) in paragraph (6), by inserting ''or listed chemical'' after ''controlled substance''; and

(2) in paragraph (9), by striking ''a felony provision of''.

SEC. 7. THRESHOLD AMOUNTS.

Section 102(39)(A) of the Controlled Substances Act (21 U.S.C. 802(39)(A)), as amended by section 2, is amended by inserting ''a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical,'' before ''a threshold amount, including a cumulative threshold amount for multiple transactions''.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date that is 120 days after the date of enactment of this Act.

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